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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of ANNE P. GRIFFIN
and JAMES GRIFFIN.

ANNE P. GRIFFIN,

Respondent,

v.

JAMES GRIFFIN,

Appellant.

SAN DIEGO COUNTY DEPARTMENT
OF CHILD SUPPORT SERVICES,

Intervenor and Respondent.

D055872

(Super. Ct. No. D202126)

APPEAL from a judgment of the Superior Court of San Diego County,

Patti C. Ratekin, Judge. Affirmed.

This case is before us a second time. In the previous appeal, *County of San Diego v. Griffin* (Aug. 4, 2006, D045659) [nonpub. opn.] (*Griffin I*), we interpreted the plea agreement between San Diego county and James Griffin by applying contract rules. We

remanded the matter to the trial court to ascertain whether the arrearages the county sought included arrears that should have been eliminated under the plea agreement. The sole issue raised by this appeal is whether the trial court correctly interpreted our instruction on remand.

Griffin avers that the trial court "modified" our opinion based on its finding that the arrearages deleted by the plea bargain applied to only two of the Griffins' children, who were still receiving aid at the time of the plea bargain, and not to two other children who had stopped receiving aid between 1992 through 1996. We conclude the trial court complied with our instructions. Accordingly, we affirm the judgment.

BACKGROUND

The facts related to this case are set forth in detail in our opinion in *Griffin I*, and therefore we merely summarize them here. After Griffin's 1988 divorce, the trial court ordered him to pay monthly child support. By 1992, he had incurred approximately \$60,000 in arrears. The district attorney filed criminal charges against Griffin for non-payment of child support under Penal Code section 270. In 1996, Griffin pleaded guilty in exchange for the elimination of the arrears. Nonetheless, in 1998, the county insisted that Griffin still owed \$97,535.65.

Griffin filed a family court action requesting specific enforcement of the plea bargain. Following a hearing, the commissioner ruled that the plea agreement did not eliminate Griffin's arrearages, and specific enforcement was inappropriate.

Griffin appealed, and we reversed the trial court's decision. Our opinion pointed out that the appellate record contained no transcript of the plea agreement proceedings.

Based on a minute order stating, "Arrears are deleted," we determined that when the plea agreement became effective in February 1996, Griffin's arrears were totally erased. Nonetheless, we noted that the record did not specify whether the \$97,535.65 in arrears sought by the county included arrears incurred after Griffin entered into the plea agreement; accordingly, we remanded for the trial court to make that determination.

On remand, the trial court did not locate a copy of the criminal complaint filed in this matter; nonetheless, it listed on the record several readiness docket sheets from the early 1990's that it had reviewed.¹ Based on those documents, the court concluded: "There's ample evidence explained at one hearing: "[T]he parties to this agreement were the county and [Griffin], and it related only to the two children: Nathan and [Naaman]. So the interpretation of the agreement that any arrears owed to the county for those two children . . . up through February 21st, 1996, are waived. Anything owed to the mother as she was not a party to that agreement and anything owed for the other two children: Nicole and Noah, remain due and payable by the father."

The trial court reiterated that conclusion during the last hearing it conducted on this matter: "I did an extensive amount of research on this case and I found that the [Penal Code section] 270 filing was only as to Nathan and [Naaman]. [¶] And for that reason, the contract between the county and [Griffin], I don't believe encompassed the

¹ The trial court relied on the following documents: minute orders dated October 14, 1992; October 28, 1992; January 27, 1993; October 26, 1993; readiness docket sheets dated April 21, 1994, July 20, 1995, and September 28, 1995; and an August 11, 1992 letter stating the prosecutor's office filed a complaint in superior court charging Griffin with violations of Penal Code section 270. Respondent's motion for judicial notice of these documents is granted under Evidence Code section 452, subdivision (d).

two older children who had previously been emancipated at that point in time, the way I understand the facts to be. And so, in my mind the plea agreement between the county and [Griffin] was in the form of a contract. It didn't include the mother because she was never consulted, she never signed the plea agreement. So the county could only negotiate the arrears that were owed to them and not to the mother. . . . [¶] And so that's why I found that the waiver of arrears could only be waived as to those two children that were subject to the [Penal Code section] 270 charges. [¶] The other two children weren't part and parcel of the allegations. So the county was negotiating with [Griffin] and I believe and I find that it was only as to those two children. [¶] I read the . . . appellate court decision over and over and over again trying to come to the right decision. And so I kind of fell back to contract law. [¶] The parties were contracting and the basis of the contract at the time was only those two children. So that's why I come to that conclusion."

The trial court calculated that Griffin owed the county for unpaid child support as follows: \$25,148.77 in principal, and \$30,497.35 in interest (from May 1, 1985 thru April 30, 2009). Additionally, Griffin owed his ex-wife for child support as follows: \$9,050 in principal and \$13,707.08 in interest (from July 1, 1990 thru April 30, 2009).

DISCUSSION

Griffin merely contends the trial court impermissibly modified our ruling in *Griffin I*. He does not challenge the factual basis for the trial court's conclusion that the criminal charges and the plea agreement related to only two of his children, and consequently he continued to owe support payments regarding the other two children. Having reviewed the documents the trial court relied on, we agree with the trial court's

conclusion. Griffin also does not challenge the trial court's calculations of his arrearages, and we have no basis for disputing the calculations; therefore, the matter is forfeited on appeal. (See *Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 216, fn. 4 [argument raised in the trial court but not raised on appeal is forfeited].)

"When an appellate court's reversal is accompanied by directions requiring specific proceedings on remand, those directions are binding on the trial court and must be followed. Any material variance from the directions is unauthorized and void." (*Butler v. Superior Court* (2002) 104 Cal.App.4th 979, 982; accord, *Hampton v. Superior Court* (1952) 38 Cal.2d 652, 655 ["When there has been a decision upon appeal, the trial court is reinvested with jurisdiction of the cause, but only such jurisdiction as is defined by the terms of the remittitur. The trial court is empowered to act only in accordance with the direction of the reviewing court; action which does not conform to those directions is void."].) As we stated in *In re Candace P.* (1994) 24 Cal.App.4th 1128, "In analyzing exactly what was intended by the appellate court's order it is necessary that the order 'be read in conjunction with the appellate opinion as a whole.' " (*Id.*, at p. 1132.)

"A negotiated plea agreement is a form of contract, and it is interpreted according to general contract principles. [Citations.] 'The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. (Civ. Code, § 1636.) If contractual language is clear and explicit, it governs. (Civ. Code, § 1638.) On the other hand, "[i]f the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it." ' [Citations.] 'The mutual intention to which the courts give

effect is determined by objective manifestations of the parties' intent, including the words used in the agreement, as well as extrinsic evidence of such objective matters as the surrounding circumstances under which the parties negotiated or entered into the contract; the object, nature and subject matter of the contract; and the subsequent conduct of the parties.' " (*People v. Shelton* (2006) 37 Cal.4th 759, 767.)

We conclude that the trial court did not err in interpreting our instructions on remand. Rather, consistent with our opinion, the trial court properly reviewed the scope of the plea agreement and applied contract principles to ascertain the amount of Griffin's arrears. "When reviewing the sufficiency of the evidence, this court must view all factual matters most favorably to the prevailing party and in support of the judgment." (*In re Marriage of Cairo* (1988) 204 Cal.App.3d 1255,1261.) Here, the record supported the trial court's finding that the minute order's statement that "arrears are deleted" was not meant to apply to all arrears, but only to those encompassed by the plea bargain, which related to only two of Griffin's children. Therefore, Griffin owed the county arrears related to child support for his other two children, and child support payments to his former wife.

DISPOSITION

The judgment is affirmed.

O'ROURKE, J.

WE CONCUR:

BENKE, Acting P. J.

IRION, J.